

No. 9(1)82-6Lab/6618.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s. Delton Cable India (P) Ltd., 17/4, Mathura Road, Faridabad.

IN THE COURT OF SHRI HARI SINGH
KAUSHIK, PRESIDING OFFICER,
LABOUR COURT,
HARYANA FARIDABAD

Reference No. 143 of 1980

between

SHRI VED PRAKASH GUPTA, WORKMAN
AND THE RESPONDENT-MANAGEMENT OF
M/s. DELTON CABLE INDIA (P) LTD. 17/4,
MATHURA ROAD, FARIDABAD.

Shri Sat Pal for the workman.

Shri S. K. Bhasin for the respondent-
management.

AWARD

This reference No. 143 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order, No. ID/FD/204-79/10517, dated 27th February, 1980, under section 10(i) (c) of the Industrial Disputes Act, 1947 for adjudication of the dispute existing between Shri V. P. Gupta, workman and the management of M/s. Delton Cable Industries (P) Ltd., 17/4, Mathura Road, Faridabad. The term of the reference was:—

Whether the dismissal of Shri V. P. Gupta was justified and in order? If not to what relief is he entitled?

This reference was decided by my predecessor and sent to the Government,—vide Endst. No. 520 dated 5th March, 1981 as the preliminary issue No. 1 and 2 were decided in favour of the respondent in which it was held that the claimant is not a workman under the Industrial Disputes Act, 1947 and the reference is bad in law. The workman went up to the learned

Supreme Court and this court received the orders of the learned Supreme Court dated 4th May, 1982 received in this Court on 12th May, 1982 in which the learned Supreme Court has directed "as the appeal will be heard pre-emptorily on July 27, 1982. Meanwhile, the reference before the Labour Court Faridabad will proceed on the basis that the appellant is a workman. The Labour Court will proceed to dispose of the reference as early as possible but in any event not later than June 15, 1982. In case the appellant succeeds on merits in the reference, the respondents will pay him the last salary drawn by him regularly from the month to month until the appeal is disposed of by this Court. The appellant will be permitted to file a proper and detailed claim statement within one week from today and the respondents will file their reply within a week thereafter."

After receiving this order from the learned Supreme Court the claimant filed the claim statement and thereafter the written statement filed by the respondent. They did not press for any new issue in the reference as the issues had already been framed on the pleadings of the parties. So no new issue was framed and the parties lead their evidence on the enquiry issue. The issues which I have to decide after deciding the two preliminary issues are as under:—

- (3) Whether proper and valid domestic enquiry has been conducted? If so to what effect?
- (4) Whether the termination of services of the workman is proper justified and in order? If not to what relief is he entitled?

My findings on issue No. 3 is as under:—

ISSUE NO. 3:—

The representative of the respondent argued on this issue that the workman had alleged that the domestic enquiry against him is not proper because in the year, 1979 he with other employees namely Shri K. L. Mata start persuading the employees to form another union which was to be affiliated with INTUC. This action annoyed the employer including Shri Durg Singh General Secretary of another union, who

threatened the claimant that he would teach him a lesson and he would see that he would be removed from service. So the charge-sheet dated 8th May, 1979 contained concocted charges which are framed and issued to the workman, in collusion with Shri Durg Singh, the Secretary of the union. The respondent threatened all the employees for not assisting the claimant and the name of Shri Laxmi Chand was not mentioned in the charge-sheet and that the enquiry officer was biased and he did not record the proceedings as per the evidence of various witnesses. He conducted the proceedings of his own accord and the workman witness Shri K. L. Mata was not called to give the evidence in favour of the workman. So the opportunity was not given to him. Further he has alleged findings of the Enquiry Officer are perverse inasmuch as they are not based on evidence on record. The findings have been manoeuvred by the management in collusion with the Secretary of the Union. The Enquiry Officer did not take into consideration the six sheets containing signatures of about 100 employees who had stated that the workman had not abused any one. The enquiry officer ignored the letter from Shri Laxmi Chand and further he was persuaded by the management to depose against the workman and the dismissal is illegal and malafide as the enquiry was not conducted by an independent officer who did not afford proper opportunity to defend the workman. The punishment of dismissal is shockingly disproportionate to the charges. He argued that all the above allegations have been made by the claimant for the first time in the claim statement filed recently. He did not mention these allegations prior to this, though he had the time to make these allegations. The enquiry conducted by the management is valid and in accordance with the law. The claimant had been given fullest opportunity to rebut the charges. He was given the chargesheet dated 5th August, 1979, which is Exhibit M-3. The claimant committed procedural mistake by handing over the rejected challans both copies to the contractor's employee and when this fact was brought to his notice, he flared up and abused Shri Durg Singh and the language used was so filthy which is clear in the charge-sheet. The workman did not stop here and he went to the extent of uttering further such filthy abuses against Mr. Bagga, a senior employee of the Company which is also clear in the charge-sheet. The charges against the claimant were grave and the management rightly decided

to hold the enquiry after the explanation of the workman. The workman totally denied the charges. Shri K. P. Aggarwal, who was a outsider was appointed as enquiry officer, who conducted the enquiry and gave his findings. The enquiry officer came in the witness box and deposed about the whole proceedings of the enquiry that he conducted the enquiry in accordance with the principle of natural justice and gave full opportunity to the claimant to defend himself. The enquiry proceedings marked MW-XI is very clear about it. The workman participated in the enquiry from 11th August, 1979 and signed the proceedings in token thereof. He demanded some copies of documents which were given to him by the representative of the management. The first witness examined by the management was Mr. Saini, the Personnel Officer of the company and after his examination, the workman was asked to cross examine the witness. The claimant wanted time for the cross examination and the proceedings were adjourned on the very ground. The claimant was given the copies of the proceedings after every proceedings. The claimant asked the Enquiry Officer to produce an advocate in the enquiry but that was denied because no advocate can be allowed to assist the workman under the law but the claimant was asked to bring any workman inside the factory. The respondent examined Shri Suresh Kumar Bagga, as second witness of the respondent also referred to the abuses uttered by the workman to Shri Durg Singh as well as himself, who was duly cross examined by the workman. Shri Hira Lal came as MW-3 and Shri Deep Chand appeared as MW-4 before the enquiry officer. The claimant cross examined by the witnesses. All the witnesses have corroborated the story of abuses. Shri Laxmi Chand, Accountant of M/s. Gurmukhdass also came before the enquiry officer to depose that both the copies of challans handed back to him after recording as rejected. After closing the respondent witnesses before the enquiry officer the claimant was called to adduce evidence who examined himself and denied the charges and closed his case without giving any evidence before the enquiry officer. The enquiry officer on the basis of the evidence adduced before him submitted his report Exhibit MW-12 and found the claimant guilty of the charges. The charges have been clearly established by the testimony of the various witness produced by the management. By the above proceedings it is clear that the enquiry has been conducted in

accordance with the principles of natural justice in accordance with the Supreme Court judgments. The workman was clearly informed the charges levelled against him and was given to reply the same. The explanation having been found un-satisfactory and proper domestic enquiry was conducted, and in the domestic enquiry the witnesses were examined in the presence of the workman and he is given opportunity to cross examined them. The workman upon the conclusion of the management evidence is given opportunity to read defence. The workman was given full opportunity and he participated in the enquiry through out. The workman cocked up the allegation made for the first time before this Hon'ble Court which are after thought and liable to be ignored. The allegations made by the claimant are vague in nature. It has not been shown as to how the enquiry officer acted as biased. The allegation regarding the victimization due to his alleged act of forming a new union is false one and is not proved by the workman in evidence in any way.

The representative of the workman argued on this issue that the charges framed against the workman are false and the respondent wanted to remove the workman from service as the workman framed another union in the factory and Shri Durg Singh was the General Secretary of the previous union threatened the workman to get him removed from the service. So the respondent concocted this story against the claimant. The workman joined the service of the respondent management in the year 1971 and without any interference he worked up to the year 1979. There is no previous defaults in the service of the workman which the management has admitted and there is nothing on the record about the previous defaults of the workman of any sort. So how the workman changed his behaviour against the respondent after such a long service. No sensible man can use such a filthy language in the company and the workman who is a very civilised person cannot use such language against the officer or his colleague. So they concocted this story and gave the false chargesheet to the workman. The claimant gave the reply which is Exhibit M-4 and denied the charges. He also gave 5 sheets of papers with signature of more than 100 workmen in the factory who have signed in favour of the claimant that he had not abused any one in the factory during the course of his

duty. He further argued that the enquiry officer should have called few of these workmen given with the reply who have signed the papers saying no abuse was given by the claimant, but the real fact is that the respondent filed another list of signatures which is Exhibit M-6 of 90 persons before the Enquiry officer by the representative of the respondent. It was the date of the enquiry officer to know the real fact by calling the signatories without which no truth can be find out. The management threatened all the employees of the factory for not assisting the claimant and when the claimant knew of this fact that no body is ready to assist in the enquiry he requested the Enquiry Officer to allow him to call some outsider or some advocate to assist him in the enquiry which was refused by the enquiry officer and it is a denial of opportunity to the workman. He further argued that the enquiry officer recorded the proceeding of the witnesses of his own way. The workman objected this fact in the enquiry proceedings and in the enquiry proceedings he has remarked his protest on 16th August, 1979. But the Enquiry Officer did not care of this objection and recorded the evidence of the witnesses on his own way, suited to his interest. The management produced the officers of the company in the enquiry and only one out-sider Shri Laxmi Chand was only examined who has not favoured the respondent in his evidence. The Enquiry Officer ignored the evidence of Shri Laxmi Chand who has stated truth in his writing Exhibit M-X/3 in which he has written that these challans Exhibit M-7 & M-8 were returned to the person who had accompanied him from Maintenance Department. He further argued that there is no corroboration of the fact in the witnesses of the respondent before the enquiry officer and the enquiry officer has not based the findings on the facts of the enquiry and the evidence produced by the respondent. He further argued that the workman was not given the list of witnesses before the start of the enquiry. So the enquiry was not proper and fair.

After hearing the arguments of both the parties and carefully going through the file I am of the view that the allegations made by the claimant in his cross examination against the enquiry and the enquiry proceedings against him give the impression that the enquiry officer has acted properly in the proceedings and gave the

full opportunity to the workman as required by the rules of law. So I cannot hold that the enquiry was not fair and proper, but after going through the findings of the enquiry officer it is very clear that the enquiry officer did not give his findings according to the evidence and record produced before him, which is a subject matter of forth issue. After deciding this issue in favour of the respondent, I called the parties to adduce any other evidence on the other issue if any. The respondent did not produce any evidence on the other issue and the claimant came as his own witnesses and my findings on 4th issue is as under:—

ISSUE NO. 4:—

Issue No. 4 is as per reference?

The representative of the respondent argued on this issue that after deciding the enquiry issue in favour of the respondent, the allegation of victimization came in front which is to be proved by the workman leading a definite evidence. The victimization is not proved by the workman by any way. The allegation of the claimant that he was forming a new union in the factory and that is why the office bearers of the company including the other union General Secretary Shri Durg Singh threatened the claimant is not proved by any evidence of the workman except his own statement. This is not sufficient and in respect of Section 11-A it is proved by all means that there were charges of grave nature against the workman. He abuses filthy and indecent language to his officers which is most unbecoming of an employee particularly, being a Security Inspector in charge watch and ward. So there is no question of interference into the quantum of punishment given by the management. The Honble Court cannot invoke section 11-A in this case as the respondent has proved beyond doubt the charges against the workman after a proper enquiry conducted against him. The respondent has not acted arbitrarily and mala fide. The respondent has cited 1981-Lab. I.C. Page 1304 of Calcutta High Court which also relates to the termination of service of the security man. In this case the Industrial Tribunal found that a proper domestic enquiry was held but it interfered into the quantum of punishment. The Calcutta High Court reverted the orders of the Labour Court after hearing the arguments on the

case. He further argued that it is admitted that section 11-A of the Industrial Disputes Act, empowers the Industrial Tribunal/Labour Court to interfere with the punishment awarded by the management and alter the same but after satisfaction by one way or the other regarding misconduct and punishment and its modification only on the basis of materials on record before it, and where the workman fails to show victimization or unfair Labour practice the court cannot interfere in the punishment awarded by the respondent management. He further argued that the management has certified Standing order and the conduct of the workman is abusing a co-employee and another senior employee of the company constitute a major misconduct under the Certified Standing Orders. Certified Standing Orders have statutory force of law and the management is entitled by virtue of the powers vested in it under the Certified Standing orders vested in it under the Certified Standing Orders to dismiss an employee even on misconduct. So the termination of claimant is justified and there is nothing wrong in the same.

The representative of the workman argued that the termination of the claimant is not justified and the findings of the Enquiry Officer is not proper and according to the proceedings of the enquiry before him. There are contradiction in the statement of witnesses of the respondent. He drew my attention towards the statement of Shri Bagga, who has stated before the enquiry officer at page 3 of the proceedings that Shri Gurmukhdass man came to him and asked him for the signature in the challan and I sent the person Shri Laxmi Chand and Shri Durg Singh, but Shri Durg Singh has stated before the enquiry officer that Shri Laxmi Chand, Shri Gurmukhdass's man came to him with a challan and asked for his signature and to prepare the bills and Shri Luxmi Chand stated in his statement that he showed the challan to a clerk who send the man with him to the gate after its verification. He argued that the dispute arises from coming of Shri Luxmi Chand, the Contractor's man with challan to prepare the bills. Shri Bagga states that he came to him to sign and Shri Durg Singh states that he came to him for signing the challans and preparing of bills. The enquiry officer did not consider these facts in his findings. He further argued that Shri Luxmi Chand have stated in his cross

examination before the enquiry officer "You returned both the copies to that man and he gave them to me". He further argued that MW-2 Shri Bagga states that when Shri Durg Singh was abused, Shri Hira Lal myself and Ch. Deep Chand were present there. Whereas Shri Hira Lal as MW-3 states in his cross examination "When Durg Singh abused I and Ch. Deep Chand were present. He has not mentioned the name of Shri Bagga what Mr. Bagga has stated in his statement. He further argued that the enquiry officer has not considered the writing of Shri Luxmi Chand which he has given as Exhibit M-X/3 in which he has stated that the challans was given to the person who accompanied Shri Luxmi Chand after its rejection. It shows that the challan was not given to Luxmi Chand which is allegation of the respondent against the claimant in the chargesheet. As the workman has not knowledge of cross examination so he could not confronted in the cross examination of Shri Luxmi Chand who has come as witness of the respondent as MW-6. He further argued that when the challans was not given to Shri Luxmi Chand the basic charge or which the buses were stand also have no basis to stand. The language what the respondent alleged is used by the workman cannot be used by a sensible man and a person who is an old employee of the respondent. The workman had denied the charges is his reply and with the reply he submitted the signatures of more than 100 workmen stating therein that the claimant has not abused any officer or employee of the company. The enquiry officer should have summoned some of the signatories to know the truth about the fact which he failed to do. He depend the false and tutored witnesses of the respondent. All the witnesses of the respondent have stated that the workman used the filthy language. The enquiry officer also failed in his duty not to summons the witness which was requested by the workman. Shri Mata who was the employee of the respondent and who was the workman with the claimant inframing the new union in the factory. He further argued that the enquiry officer in para No. 4 of his enquiry proceedings as included the terms abused in the misconduct which is not clear in the certified standing orders of the company. He referred LLJ-79-Vol. II-page 280 of the High Court of Judicature, Madras, between the management of Binny Limited and additional Labour Court, Madras and another in which it

is hold that the Labour Court is impowered to interfere in the findings and orders of the respondent if he so satisfy under section 11-A of the Industrial Disputes Act. He has stated that in that case, the workman was an old employee of the respondent and there was no allegation on the workman of any such type on any early action during his period of service. So the Labour Court has properly hold that the punishment given by the respondent of dismissal is wrong.

After hearing the arguments of both the parties and going through the file, I am of the view that the workman is given the heavy punishment of the fault which was not so big. The workman joined the service of the respondent in June 1971 and after that there is no charge of mis-conduct against the workman in his service period. He has a clear previous record and the workman was given the promotion on 14th June, 1972 for his good work. The respondent did not give any evidence to prove his bad conduct or behaviour in the past. It is very surprisingly that a person of good behaviour cannot change at once in such a bad way that he can abuse and used filthy language toward the co-employees and to his officers. The enquiry officer has failed in his duty to call the signatories which has come to him from both the sides in favour of the workman and against the workman. For coming to the truth he should have call some of the signatories to find out the truth in this case. The main dispute started from Shri Luxmi Chand clerk of the contractor, who came with a challan on which this all abuses started has given in writing which is Exhibit M-X/3 in which he has stated that the challan was given by the claimant to the person who came with him from construction department, whereas the charges are that the workman gave the challan copies to Shri Luxmi Chand to make loss to the respondent. Shri Luxmi Chand came in witness box and stated that he came to Shri Gupta to ask about the chalans he referred him to the concerned department from where the clerk accompanied him to Shri Gupta who searched out the register and write down the words 'rejected' on the challans. When he rejected the challans then what was loss he could made to the respondent, and there was no question of abusing on such petty matters. It was not a big thing on the part of the claimant. The enquiry officer should have given the findings according to the evidence before him in the enquiry proceedings. He has neglected Exhibit

M-4 and M-6 while giving the findings of the enquiry. He also failed to summon the necessary witnesses and rejected the request of the workman for calling these witnesses. So I feel that the workman should not have terminated at the first instance because if we accept that he do so then it was the first mistake which could be over-looked because it was not so big. It is usually happened in the companies and old employee cannot be terminated on such a petty thing. So the punishment is disproportionate of the allegations as alleged by the respondent and the workman is entitled for his reinstatement with full back wages and continuity of service.

I am sending the same to the Government as there is no clear direction of learned Supreme Court to send the same to the Hon'ble Court. The 14th June, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 1446, dated the 26th June, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour & Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

The 28th July, 1982

No. 9(1)82-6 Lab. 16747.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and the management of Haryana Roadways, Rohtak.

BEFORE SHRI BANWARI LAL DALAL,
PRESIDING OFFICER, LABOUR COURT
HARYANA, ROHTAK.

Reference No. 4 of 81
between

SHRI KANWAL SINGH, WORKMAN AND
THE MANAGEMENT OF HARYANA
ROADWAYS, ROHTAK.

Present :—

Shri S. N. Vats, for the workman.
Shri S. C. Sigal, for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—vide his order No. ID/SPT/103-80/60107 dated 15th December, 1980 under section 10(i) (c) of the I. D. Act for adjudication of the dispute existing between Shri Kanwal Singh, workman and the management of M/s Haryana Roadways, Rohtak. The term of the reference was :—

“Whether the termination of services of Shri Kanwal Singh was justified and in order? If not to what relief is he entitled?”

On the receipt of the order of reference notices as usual were sent to the parties. The parties put in their appearance on 2nd April, 1981, filed their respective pleadings, on the basis of which the following issues were framed :—

1. As per the term of reference ?

The management examined Shri Jai Pal Singh, Clerk as their only witness and closed their case on 2nd September, 1981. The workman examined himself as his own witness and closed his case on 3rd November, 1981. I heard the learned representatives of the parties and have also gone through the evidence on the file carefully and decide the issue as under.

ISSUE NO. 1 :—

The workman has pleaded in his notice of demand that he had been sick from 1st May, 1979 to 7th April, 1980 and he submitted his leave application for this period alongwith medical certificates of illness from the Registered Medical Practitioner as well as the first one from a doctor working in the medical department Delhi. He has further alleged that he was not served with any charge-sheet or show cause notice. His termination was illegal and against the principles of natural justice.

The management rested the claim of the workman,—vide their written statement and pleaded that the order of the General Manager terminating the service of the workman was legal and not violated the principles of natural justice. The workman was granted due rest from 1st May, 1979 to 19th May, 1979 and he was

to join his duties on 20th May, 1979. The workman submitted his sick leave application on 23rd May, 1979 for the period from 20th May, 1979 to 27th May, 1979 alongwith medical certificate from Delhi. He again sent a registered application for sick leave with effect from 28th May, 1979 to 3rd June, 1979 alongwith the medical certificate by private medical practitioner. The workman likewise extended his leave period from 4th June, 1979 to 8th July, 1979 by sending application accompanied with medical certificate. The sick leave application were never sanctioned. The management sent a letter dated 30th May, 1979 to the workman asking him to join his duties. Again a reminder dated 18th June, 1979 was issued to him to join immediately but he failed to join. After 8th July, 1979 no application for leave was ever received from the workman. A charge-sheet was issued to him,—vide letter No. 5783/ECD dated 1st August, 1979 but no reply was submitted by the workman. A reminder dated 5th September, 1979 was issued asking him to submit a reply which also went unheeded. A general notice was published in the daily 'National Herald' (English) dated 26th February, 1980 asking the workman to resume duties within 15 days from the publication of notice, failing which his service would be terminated for wilful absence from duty without any further notice. The workman never joined his duty even after the publication of this notice. The service of the workman were then terminated,—vide order dated 7th April, 1980 with effect from 20th May, 1979. The management witness proved all the letters produced by the management. In his cross-examination the witness MW-1 has given out that though there was no proof with him that the letters alleged to have been written to the workman were delivered to him but he could say while seeing the record that the letters were bearing despatch number and as such he was convinced that the same were despatched. He also could not say whether the termination letter Ex. MW-1/1 was received by the workman or not.

The workman deposed that he proceeded on leave while he was taken ill on 1st May, 1979. He continued to submit his leave applications upto 12th July, 1979 alongwith medical certificates. He did not receive any letter rejecting leave application. He did not even receive any newspaper containing the notice declaring him absent from duty. He further stated that when he went to the office for payment of his bonus, in June, 1980 he was told that orders 'not to pay'

has been passed against him and even the General Manager was not empowered to rectify the above order as his services had been terminated. On asking that how his services would be terminated when he had not received any such order, then he was told that there were heaps of orders lying with the clerk concerned and he could take as many as he pleased. The clerk then gave him two three papers out of those lying with him. The workman admitted as correct that from 1st May, 1979 to 20th May, 1979 he was on rest days and his first leave application was from 20th May, 1979 to 27th May, 1979. He also admitted as correct that all the leave applications were submitted with medical certificates after the expiry of the previous leave period. He further stated that he was not aware as to what was the illness from which he was suffering but in the beginning he was suffering with cough and fever. He also gave out that in the Last Pay Certificate he had given his home address and not the address of Bahadurgarh. He used to reach his home after taking medicines from Bahadurgarh. His home was situated at village Nuna Majra about four to five kilometers from Bahadurgarh. He did not receive any intimation from the office regarding sanction of leave and he was not aware as to whether his leave applications were sanctioned or rejected. On Ex. MW-1/7 and other letters the address given there in was his correct address. But he did not receive any such letters. He admitted that he might have sent his last leave application on 12th July, 1979 for leave upto 8th July, 1979. He further stated that he never went to the office for getting his pay. He further stated that the two three papers which he mentioned in his examination in chief included the termination order dated 7th April, 1980. He denied the suggestion as incorrect that he was terminated on account of remaining absent from duty.

From the evidence produced by the parties I am fully convinced that the workman remained wilfully absent from duty from 20th May, 1979 onwards upto 7th April, 1980 the date of his termination. The applications for leave sent by the workman were sent after even a period of more than two weeks of the expiry of the previous leave period with two medical certificates for one week each and even then the period was not covered. One such application is Ex. MW-1/6 and another is Ex. MW-1/8 and after 8th July, 1979 the workman neither sent

any leave application nor he joined his duties upto 7th April, 1980. I am not even prepared to believe that the workman did not receive any or letters asking him to join his duties or the charge-sheet and show cause notice issued to him as the same were despatched on the address admitted to be the correct address of the workman. It is also hard to believe that the workman had not received the orders of termination as the workman had made a contradictory statement when he appeared in the witness box to his pleadings in the notice of demand. In his notice of demand he has pleaded that he remained ill from 1st May, 1979 to 7th April, 1979 while he stated as WW-1 that he was on rest days from 1st May, 1978 to 19th May, 1979 and he came to know of his termination when he went to receive the bonus amount in the month of June, 1980 and when he received two three papers which also included the order of termination. The demand notice is dated 28th May, 1980 which falsifies the statement made before me that he came to know of his termination only in the month of June, 1980. The contention of the workman representative that the termination was not effected as the order of termination was never communicated to the workman is also not sustainable in view of the evidence produced before me. I am therefore constrained to hold that the services of the workman were justifiably terminated on account of his remaining absent from duty wilfully and the workman was afforded many opportunities to join his duty. The order of termination was duly communicated to him and the same was justified and in order. The workman is not entitled to any relief. The reference is answered and returned accordingly.

Dated : 25th June, 1982

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana,
Rohtak

Endorsement No. 1530, dated 29th June, 1982

Forwarded (four copies) to the Secretary to Government Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the I.D. Act.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana,
Rohtak

The 30th July, 1982

No. 9(1)82-6 Lab. 6972.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Bushing Schmitz Pvt., Mathura Road, Faridabad.

BEFORE SHRI M. C. BHADWAJ, PRESIDING
OFFICER, INDUSTRIAL TRIBUNAL,
FARIDABAD

Reference No. 191/1979

between

SHRI DURGA NAND JHA WORKMAN AND
THE MANAGEMENT OF M/S BUSHING
SCHMITZ PRIVATE LIMITED, MATHURA
ROAD, FARIDABAD

Present:—

Shri Mohit Kumar Bhandri, for the
workman.

Shri H. R. Dua, for the management.

AWARD

The State Government of Haryana referred the following dispute between the workman Shri Durga Nand Jha and the management of M/s Bushing Schmitz Private Limited, Mathura Road, Faridabad, by order No. FD/83/79/27082 dated 26th June, 1970, to this Tribunal, for adjudication, in exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Durga Nand Jha was justified and in order? If not, to what relief is he entitled?

Notices of the reference were sent to the parties who appeared and filed pleading. The following issues were framed by my learned predecessor on 13th November, 1979:—

(1) Whether the enquiry is fair and proper?

- (2) Whether the termination of services of the workman concerned was justified and in order?

- (3) Relief.

And the case was fixed for the evidence of the management. The management examined Shri H. S. Yadav, Administrative Officer, as MW-1 and the workman examined himself as his own witness.

ISSUE NO. 1 :

MW-1 deposed that the enquiry in the case was conducted by Shri R. S. Chabra who had gone to foreign country now a days. Copy of the proceeding was, Exhibit M-1 and copy of enquiry finding was, Exhibit M-2. He recognised the signatures of the enquiry officer. The appointment letter of the enquiry officer was Exhibit M-3. Copy of charge-sheet was Exhibit M-4 and explanation of the workman was, Exhibit M-5. The other documents produced during the enquiry was, Exhibit M-6 to M-10. He further stated that he knew the concerned workman who had signed the enquiry proceeding. In cross-examination, he replied that he was never present in the enquiry. He admitted that Certified Standing Orders were applicable in the factory. He did not know when charge-sheet was issued to the workman. He could not tell if letter, dated 3rd March, 1979 was issued the workman during the enquiry. He admitted that the workman was President of the union. He also admitted that the reference No. 104 was pending before this Tribunal. He also admitted that no approval application was filed for the action of the management. The concerned workman deposed that he joined service on 19th June, 1973. He had demanded some facilities during the enquiry and had submitted letter, copy, Exhibit W-1. He was not given any facilities and he submitted another letter to the enquiry officer copy of which was Exhibit W-2. He was not allowed to produce his defence witnesses. In cross-examination, he admitted that Shri R. S. Chabra was his enquiry officer. He also admitted that he had signed the proceedings at mark 'A'. Learned representative for the workman argued that the charge-sheet was not issued by the competent authority nor the workman was allowed time prescribed in the Certified Standing Orders for submission of his explanation. He also argued that the enquiry was not proper.

I have gone through the enquiry file and find that the workman was charge-sheeted for dis-obedience of order of his superiors and thereby not doing any work on 5th March, 1979 because the earlier the workman has denied the allegation in his explanation, Exhibit M-5 and further stated that he had no connection with Hackshaw Machine and he was directed to operate. In case the management still wanted him to operate the same it took responsibilities for defective production. He has also mentioned that he was appointed as press operator. In reply to the explanation, the management again wrote him a letter, Exhibit M-4 in which the charge was repeated and however copy of report of Shri H. R. Chadha was also supplied to the workman that he had been operating Hackshaw Machine when there was no work for him on the press. He had also reported that the workman had so worked on number occasions and had signed the operation card. The workman was given 24 hours for his explanation and he replied the same on the lines of his earlier explanation. He further alleged that Shri H. R. Chadha had concocted the story to harras the workman because he was President of the union. The management was not satisfied with the explanation and appointed Shri R. S. Chhabra as enquiry officer,—vide letter, Exhibit M-9. The letter of enquiry was received by the workman and he issued letter to the management contending that the enquiry officer not independent being employee of the management. Secondly he demanded copy of relevant standing orders, thirdly, list of witnesses and fourthly, sought permission to associate Comrade B. M. Sharma as his representative in the enquiry. Management replied,—vide letter, Exhibit M-10. It refused to change the enquiry officer and denied that he was not independent enquiry officer. It was further pointed out that Hindi Version of the Certified Standing Orders was displayed at the main gate. He could consult the same along with his representative. It was also pointed out that list of witnesses will be supplied to him at the time of domestic enquiry and lastly he was informed accordingly to the standing orders he could associate one of his co-worker in the enquiry. It was also told that no outsider will be allowed as his representative in the enquiry. The workman participated in the enquiry along with Shri G. C. Chandela as representative. Charge-sheet was read over to him. The management examined Shri H. R. Chadha, supervisor, Shri C. G. S. Pilley and Shri S. K. Dudeja.

The workman examined himself as his own witness. I have gone through the statements of witnesses and find that only Shri H. R. Chadha had proved charges. He had also produced before the enquiry officer five operation cards of different dates to contradict the workman that he had never worked on the Hackshaw machine. Other witnesses had given statement about the admission of charge by the workman when he went to see the Managing Director in the head office. Although there was no corroborative evidence but the workman had admitted in his explanation that he did not work on Hackshaw Machine as directed by his supervisor. The enquiry officer relying upon the documentary evidence and operation cards, had reached the conclusion that the workman had been previously working on the Hackshaw Machine. As regards the contention about the partiality of the enquiry officer and other facilities demanded by the workman, I do not find anything lacking in the appointment of an officer of the company as enquiry officer. There is nothing to show that he did not perform his duties as enquiry officer impartially. The enquiry officer had allowed a representative of the workman in the enquiry. He was allowed to cross-examine the witnesses and also gave opportunities to lead his defence, although the workman did not produce other witness and confined to his own statement. As regard the allegation that charge-sheet was not issued by the proper authority. I find from Exhibit M-6 that the administrative officer had signed the same for Bushing Schmitz, Private Limited. No relevant standing orders was produced before me to show that only the manager was competent to sign such documents by the workman. From my above discussion, I find that the enquiry was fair and proper.

ISSUE NO. 2:

On this issue, the learned representative for the workman argued that the workman was penalised for his union activities. On the other hand, learned representative for the management argued that the punishment was given according to the standing orders. I have considered to the relevant standing orders and find that punishment for the major mis-conduct was given in the standing order in clause 36(b). The charge was dis-obedience by not doing the work for one day only and punishment given was dismissal from service. It is admitted that the workman had about five years service in the factory and was

President of the workers union. Punishment given to the workman is so harsh and disproportionate to the charge that itself smells excess. Therefore, in the interest of justice I set aside the punishment of dismissal.

While passing the award I hold dismissal of the workman to be unjustified. The workman was therefore, entitled to his re-instatement but justice demand that he may not be allowed full benefits of his default. Therefore, he will be lose half of the wages till he joins service.

The 24th June, 1982.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 722 dated the 30th June, 1982.

Forwarded four copies to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 14th August, 1982

No. 9(1)82-6 Lab./7054.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and the management of M/s The Haryana Co-operative Sugar Mills Ltd., Rohtak.
BEFORE SHRI BANWARI LAL DALAL,
PRESIDING OFFICER, LABOUR COURT
HARYANA, ROHTAK.

Reference No. 67 & 117 both of 1978.

between

SHRI ISHWAR SINGH AND CHAND SINGH,
WORKMEN AND THE MANAGEMENT OF
M/S THE HARYANA CO-OPERATIVE
SUGAR MILLS LTD. ROHTAK.

Present:—

Shri Sagar Ram Gupta and Shri S. N. Vats, for the workman.

Shri R. D. Sharma, for the management.

AWARD

These references have been referred to this court by the Hon'ble Governor,—vide his order No. ID/RTK/16-78/17676 dated 9th May, 1978 and ID/RTK/54-78/29509 dated 26th June, 1978 under section 10(i) (c) of the I.D. Act for adjudication of the dispute existing between Shri Ishwar Singh and Chand Singh, workman and the management of M/s The Haryana Co-operative Sugar Mills Ltd. Rohtak. The terms of the reference was:—

Whether the termination of services of the workmen was justified and in order? If not to what relief is he entitled?

On the receipt of the orders of references notices as usual were sent to the parties. The parties put in their appearance, filed their respective pleadings, on the basis of which the following issues were framed:—

(1) Whether reference under the I. D. Act is bad in law and not maintainable?

(2) If issue No. 1 is not proved in favour of the management as per reference?

On the suggestion of the parties both the references No. 67 of 1978 and 117 of 1978 were consolidated,—vide order dated 3rd September, 1978 by my learned predecessor and the evidence was to be recorded in reference No. 67 of 1978 to be read in both these references. The management examined Shri Ram Chander, Time Keeper, Shri Daya Kishan, Time Keeper and Shri Attar Singh, General Assistant as their witnesses and closed their case. The workman examined themselves as their witnesses and closed their cases. I heard the learned representatives of the parties and decide the issues as under:—

ISSUE NO. 1:

The management has neither pleaded as to how and on what grounds the dispute referred to this court for adjudication is bad in law nor the management has produced any evidence on this issue and the same has also not been pressed during the course of arguments. The issue is accordingly decided against the management.

ISSUE NO. 2:

The management has pleaded that the workmen were engaged on casual and daily

rate basis when the mills required their services and the respondent mills was within its right to dispense with their services when it was not required. The management further pleaded that the services of casual and daily rated persons were liable to be dispensed with without any notice and assigning any reason.

On the other hand the workman has alleged that they were working with the respondent with effect from 3rd December, 1974 against a permanent post and the management terminated their services on 9th December, 1977 and on 3rd May, 1977 and they were not served with any notice for one month or one month salary as provided in the certified standing orders was not paid. They have also pleaded that other persons have been employed in their places.

MW-1 Shri Ram Chander has deposed that the head of the department sends requisitions for casual employees. The requisition was meant for month or two and the casual employee was employed for that period for a short time and his services were terminated without any notice after no requisition was there. In his cross-examination he has stated that casual employees are not issued appointment letter and no letter of appointment was issued to the workmen. He admitted that the workman Chand Singh was a Cane Clerk. In season the post of cane clerk was of permanent nature seasonal though from season to season according to the number of centres. The number of posts varied. He also admitted that the workman had worked for last three seasons. It was also correct that the number of cane clerks did not decrease during the last three seasons. He also admitted that after the removal of the workman persons mentioned at Serial No. 11, 12, 14, 15, 16 and 18 of the list attached with Ex. M-1 had been employed by the management. M-2 was the copy of the certified standing orders. He also admitted that no notice was given to the workman in respect of their termination nor any retrenchment compensation was paid. Similar statement was made by Shri Daya Kishan, Time Keeper. He gave out in his cross-examination that no daily wages was engaged during the season in which Shri Ishwar Singh was removed from service. However, during the next season about 45 daily wages were appointed but Shri Ishwar Singh was not included and

was not called during the season 1977-78. Interviews were held for the first time on the commencement of the season for the persons sent by the employment exchange and for those who were on daily wages during the previous years. He further stated that he was not aware that those who worked during the previous season would be called during the next season and if there was such provisions under the certified standing orders. He also admitted that about 8 to 10 persons were engaged directly and not through employment exchange. He further stated that bonus was paid to the permanent, daily wages and seasonal also.

MW-3, Shri Attar Singh, General Assistant has deposed that vacancies for monthly and permanent jobs were filled through employment exchange and the daily wagers were also eligible for appointment on such post after interview. For the season 1977-78 the requisition Ex. M-2 was sent. Ex. M-3 was displayed on the notice board. The list Ex. M-4 and M-5 received from employment exchange. Some daily wagers also responded and their applications were received. The selection list of the daily wages was Ex. M-6. Ex. M-6 is the combined list including the persons selected from amongst the persons sent by the employment exchange and also from amongst the persons who responded through the requisition list also played on the notice board. He further stated that the workman Shri Ishwar did not respond and did not appear for an interview and as such was not taken. He further stated that as per clause 3 order B of the standing orders casual and temporary employees are treated on the same footing. The extract of the certified standing order regarding classification of workmen and their termination was marked as Ex. M-13. The witness denied as incorrect that Ex. M-2 and M-3 were never placed on the notice board and Ex. M-3 was prepared afterwards.

WW-1 Shri Ishwar Singh deposed that he worked as cane clerk for 3rd December, 1974 to 9th December, 1977. On 9th December, 1977 the management sent one other person to work in his place. Thereafter he met the Managing Director, but he gave him no satisfactory reply. He admitted in his cross-examination that he worked on daily rate basis but he was not aware whether sanction from time to time was obtained for his work. He stated that he used to work

continuously for the whole of the season and worked for several seasons. He denied as incorrect the suggestion that he never appeared for interview. He stated that he received bonus every year. He was not paid any retaining allowance for the off season. Shri Chand Singh also made a similar statement.

From the evidence led by the parties it is an established fact that the workman worked for three seasons for 1974-75, 1975-76 & 1976-77. The management has not led any evidence on the fact as to how the workman were being engaged for these seasons whether they were engaged after being interviewed or without going through such formality. The management witness MW-1 has stated that casual employee was engaged for a short period for a month or two as per the requirement of the work. But all the three witnesses examined by the management have admitted that the workman worked for complete three seasons and as such the workmen can not be deemed to be as casual employees. MW-1 has further stated in his cross-examination that during the season the post of cane clerk was of seasonal permanent nature and in my opinion any person who has worked for three seasons continuously on the post which is of seasonal permanent nature shall be deemed to be a seasonal workman and not a casual labour who is engaged for work of temporary and casual nature. A seasonal workman is defined in sub-clause II of clause 1 under the heading classification of workmen as one who is engaged only for the crushing season. There is no evidence on the record that the workmen concerned were engaged only for a month or two to do some temporary or casual work but it has been established that they were engaged as cane clerk, and worked for three complete seasons against permanent seasonal nature of work. Not to get the retaining allowance is no bar for a workman to be covered under the definition of seasonal workman and is not a condition to bring him in the category of casual or temporary workman. On the basis of the above examination of the evidence I hold that the workmen were seasonal workmen and not the casual workmen as alleged by the management. Under the heading termination of employment there has been provided under the certified standing order that before the termination of the service of a seasonal workman the management shall

give one month notice in writing of their intention to do so, during the season specifying the reasons for termination of services. It has also been established as admitted by all the witnesses of the management that no one month notice was given to the workmen. The termination of these workmen is therefore not in accordance with the certified standing order. The plea of the management that the workmen did not appear for interview through the workmen have stated that they did appear, is also not of any help to them and is not sustainable as the services of the workman Shri Chand Singh had been terminated on 3rd May, 1977 and that of Shri Ishwar Singh who has stated that he worked for about 28 days upto 9th December, 1977, so the act of termination on the part of the management was complete in May, 1977 and the same can not be held to be justified as the same is against the certified standing order and the same is set aside. The workmen are therefore entitled to reinstatement in the coming season of 1982-83 with continuity of service and with wages at the daily rate which was fixed from time to time and for the crusing seasons from 1977-78 onwards upto the season 1981-82. The reference are answered and returned accordingly.

Dated : 30th June, 1982.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

Endorsement No. 1621, dated 5th July, 1982

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the I. D. Act.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 9(1) 82-6 Lab./7152.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management

of M/s Dhanda Engineer (P) Ltd. Industrial Area, Faridabad.

BEFORE SHRI M. C. BHARDWAJ,
PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 9/1979

between

SHRI MUJAFFER ALI, WORKMAN
AND THE MANAGEMENT OF M/S
DHANDA ENGINEERS (P.) LTD.,
INDUSTRIAL AREA, FARIDABAD

Present:

Shri Sagar Ram Gupta for the workman.

Shri R. C. Sharma for the management.

AWARD

The State Government of Haryana referred the following dispute between the workman Shri Mujaffer Ali and the management of M/s Dhanda Engineer (P.) Ltd., Industrial Area, Faridabad, by order No. II/189/78/882, dated 6th January, 1979, to the Tribunal, for adjudication in exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of service of Shri Mujaffer Ali was justified and in order? If not, to what relief is he entitled?

Notices of the reference were sent to the parties who appeared and filed their pleadings. The following issues were framed by my learned predecessor on 9th August, 1979:—

(1) Whether the termination of services of the workman was justified and in order?

(2) Relief.

The management examined Shri L. N. Yadav, Enquiry Officer, as WW-1 and Shri V. N. Yadav, Personnel Officer, as MW-2. The workman examined himself as his own witness in addition to Subhash, son of Shri Ami Chand as WW-2 and Shri Sidni Castoles, son of Shri G. F. Castoles as MW-3. Arguments were heard.

The learned representative for the workman argued that the domestic enquiry was not held in accordance with the Certified Standing Orders and procedure as prescribed under clause 26 was not followed. The appointment of enquiry officer was also not made according to the Standing Orders. He was not qualified to hold domestic enquiry. He further argued that charge-sheet was not issued by the competent authority nor the enquiry was ordered by the competent officer. The past service record of the workman was not considered. Dismissal order was also not passed by the authority prescribed under the Standing Orders. He cited 1981-II-LLJ-page 25, 1978-I/LLJ-cited 1981-II-LLJ, page 25, 1978-I-LLJ, page 37, 1963-II-LLJ, page 58 and 1979-II-LLJ, page 450. It was further argued that the management had victimised the workman by awarding him punishment which was too severe and disproportionate to the gravity of misconduct. The charge was a theft of thinner costing about Re 1 only. He cited 1980-Volume 41, F.L.R., page 229, 1981-I-LLJ, page 57, 1981-II-LLJ, page 93 and 1981 L.I.C. (N.O.C.), page 107.

On the other hand, learned representative for the management argued that the workman was charge-sheeted for theft of one quarter of thinner. His explanation was called. He confessed his guilt. The management gave him full opportunity in the domestic enquiry to lead evidence. He held that proper domestic enquiry was held by the management and principles of natural justice were followed by the enquiry officer. He further referred to the defence evidence and argued that story put forward by the concerned workman was not credible. He contended that the appointment letter of the concerned work-

man was by the same manager who took action against him. He was a manager under the Factory Act. He cited 1981-I-LLJ, page 218.

MW-1 deposed that he had enquired into charge-sheet, Exhibit M-1. His appointment letter as enquiry officer was Exhibit M-2. The concerned workman had participated in the enquiry. The proceedings was, Exhibit M-1 and documents produced during the enquiry were Exhibit M-4 to M-12. A quarter of bottle containing thinner was also produced in the enquiry. The finding of enquiry was, Exhibit M-13. In cross-examination, he replied that he contacted the management to supply the list of witnesses to the workman before start of enquiry. He had not contacted the management to supply the list of documents as the same was not demanded by the workman. The management had supplied him only the charge-sheet for enquiry. He further replied that he was not in the employment at the time of enquiry. He had worked in a similar industry named Gopal Engineering which was not existing now. He denied the suggestion that the Gopal Engineering was a small unit. He was supervisor in that industry. He had also worked with American Universal Company, Faridabad. The management had produced before him letters of the workman, Exhibit M-9 to M-11. The past record of the workman was not produced during the enquiry. MW-2 deposed that the charge-sheet was issued to the workman by Shri A. S. Jasuja who was factory manager under the Factory Act. Copy of application of the workman was, Exhibit M-2/1, which was approved by Shri V. D. Virmani and O. K. was written by Shri Jasuja. The signature of concerned workman appeared on Exhibit M-2/2. Copy of form No. 2 under the Factory Act for the year 1978 was, Exhibit MW-2/3 which was signed by Shri V. K. Dhanda, occupier and Shri A. S. Jasuja, Factory Manager. In cross-examination he replied that Form, Exhibit MW-2/2 was not filled in his presence. He denied the suggestion that signature of the workmen were obtained on blank application

form at the time of entering into service. The same form was filled for requirement of the management. He replied that form, Exhibit MW-2/3 was sent by registered post and licence was renewed for the ensuing year on this form. The concerned workman who appeared as MW-1 deposed that he was in the employment of management for the last 9/10 years. Domestic enquiry in his case was held by Shri L. N. Yadav. He had given letters to the management copies. Exhibit W-1 and W-2 in respect of charge-sheet and enquiry. The management had not supplied him list of witnesses and list of documents. He was not allowed to full opportunity to cross-examine the management's witnesses nor he was given opportunity to lead his defence. The enquiry was completed within two or three hours. He was not told rules followed by the enquiry officer. In cross-examination he denied that application Exhibit M-11 was not in his hand. He also denied the signature on the same. He replied that he had already given, Exhibit W-3 to the management but it was returned by the Enquiry Officer. He was called for over time duty on 18th August, 1978. He had reached the factory at 7-20 A.M. He had not purchased thinner on 17th August, 1980. It was purchased by Shri Subhash Sweet Seller. He had not obtained any receipt for Exhibit W-3. He denied the suggestion that he had prepared Exhibit W-3 for production in this case. On re-examination, he had taken the thinner by mistake to the factory. It was pointed out by a co-workman at about 10-30 A.M. that there was one bottle in his cycle carrier. He informed his foreman that he had brought a thinner bottle by mistake. He also showed cash memo to the supervisor. Foreman told him to tell about the thinner to the Chowkidar. He informed the Chowkidar who told that in case there was cash memo he could take thinner while going from the factory but during lunch hour, the Chowkidar kept bottle with him telling that he will get reward detecting theft. At 2.00 p.m. the production engineer called the time-keeper and foreman and told that in case he confessed his guilt, he will be pardoned. They got a paper signed by him. He was told that the

manager will decide the matter on the next morning. He was not allowed duty for four days and was issued charge-sheet. No warning or charge-sheet ever was issued to him. In further cross-examination he replied that his house was situated at distance one furlong from the factory. He admitted that hardware chowk falls in the way while coming to the factory but he had requested his friend to purchase thinner for him. His friend lived at a distance of 200...250 yards from his house. On 17th August, 1978, at about 8.45 p.m. he met his friend. He admitted that bottle of thinner was produced during the enquiry. He admitted that he was working in the Metal Box for the last 1/4 years. WW-2 deposed that his shop was situated in Chowk of Sector No. 1 and 2. He knew the concerned workman from 8-9 years. He was asked by the workman to purchase thinner for him. He had purchased a quarter bottle of thinner from Krishna Hardware Shop. Cash Memo was Exhibit W-1. He handed over the cash memo when he came to him at 8.45 p.m. The workman was asked to sit in the shop as he was not feeling well. He had placed the bottle at carrier of the cycle of the workman. Exhibit W-1 was given by the workman to him in the morning. In cross-examination, he replied that he had not changed date of Exhibit W-1. The thinner was required by the workman for his cigarette lighter. WW-3 deposed that he had worked in the respondent-management for the last 12 years. About two and half-years back, the watchman called him at the gate and had asked him to give evidence. The theft was committed by the workman. The workman had shown cash memo in his presence. In cross-examination he replied that it was closed day of the factory. There was no manager in the office.

I have considered the arguments and documents. I find that the charge-sheet, Exhibit M-1, enquiry notice, Exhibit M-7, reply of workman letter, Exhibit M-8, enquiry notice, Exhibit M-6 and dismissal letter, Exhibit M-2 were signed by Shri Jasuja as Works Manager. The appointment letter of the workman bear also same signature as appointing authority. The same signature appeared as

manager on Form No. 2 under Factory Act. In clause 26 of the Certified Standing Order, the authority prescribed for issue of charge-sheet was manager. As regard appointment of enquiry officer, it was prescribed that ordinarily an enquiry will be conducted by a senior employee holding a responsible supervisory position in the establishment. But the management may entrust an enquiry to any responsible person not in the employment of the company, who in its opinion, is fairly acquainted with the conditions prevailing in industry. The manager was defined in clause 2(d); 'Manager' means the person for the time being managing the establishment or any one duly authorised by the management to act on his behalf, whose name shall be notified by a notice displayed at the notice board. I find that the works manager was not defined separately, in the standing orders. It was correct that the above referred documents were signed as works manager although the signatory was a manager under the Factories Act also. As regards the appointment of enquiry officer there is no prohibition of appointing an ex-supervisor of another company to be enquiry officer by the management as the management was sole judge to take decision under clause 26 of the Standing Orders. Therefore, I find no contravention of the standing order so far as issue of charge-sheet and appointment of enquiry officer was concerned. I have gone through the enquiry proceedings and find that the concerned workman was present during the enquiry. He had signed each page of the enquiry proceedings. As regards non-given opportunity for cross-examination, I find that the workman was allowed opportunity by the enquiry officer but the workman declined to avail the opportunity. He had also signed the proceedings where it was written that he did not want to cross-examine the witnesses. In defence, he appeared as his own witness and denied allegation. He had further stated that he will make his detailed statement before the Labour Court.

After going through the enquiry proceeding and statements of witnesses and that of Shri Mujaffer Ali, the concerned

workman, I have reached the conclusion that the enquiry officer had given full opportunity to the workman and think that the workman was under impression that domestic enquiry was only a business of the management, therefore, he could leave his evidence before the adjudicating authority under Industrial Disputes Act. I find that the enquiry was fair. As regards finding of the enquiry officer, the management had examined in the enquiry four witnesses including two chowkidars who had corroborated the allegation levelled in the charge-sheet. The enquiry officer had discussed the evidence recorded by him in the enquiry report. Therefore, I do not find any defect in the finding, Exhibit M-13 as well.

Reverting to the arguments that the management did not considered past record of the management. The relevant Standing Clause 27 reads "In awarding punishment under this Standing Order, the management shall take into account the gravity of the mis-conduct the previous record, if any, of the workman and any other extenuating or aggravating circumstances that may exist. The following punishment in lieu of dismissal may be awarded in the discretion of management combine with censure of warning:—

- (1) Suspension without wages for a period not exceeding two weeks.
- (2) Reducing monthly wages.
- (3) Demoting.
- (4) With holding of increment and promotions.

As is clear from the evidence that cost of half litre thinner according cash memo Exhibit W-1 was Rs. 3.21. Therefore it comes out to Rs. 1.60 for one quarter of the thinner. The contention of Shri R. C. Sharma representative for the management that the story about purchase of thinner was not credible because cash memo was for half litre whereas bottle under charge-sheet was of quarter litre. I could not believe that the customer will be for half litre and will receive only quarter litre thinner. Now coming to the punishment, I find that the alleged theft amounting to goods of Rs. 1.60 and punishment awarded was of dismissal from service whereas there were other

four punishment prescribed in the above referred clause. The employee had 9-10 years service at his credit and there is no adverse past record against him. The workman had taken the same defence in his statement before the enquiry officer which was recorded on 15th September, 1978. He had also named his friend who had purchased thiner on 17th August, 1978. Considering all the above facts I am of the opinion that the punishment of dismissal imposed was extremely harsh and out of proportion to the gravity of misconduct and the workman by this punishment has lost all the past benefits of his service as well. Presently the workman was employed in the Metal Box of India Ltd. Faridabad at Rs. 600 per month. Therefore in the fitness of things, I convert the punishment into that of discharge so that the workman could receive benefits of his past service.

As discussed above, I pass my award that the dismissal of the workman was unjustified. His dismissal be converted into that of discharge.

Dated the 3rd July, 1982.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 745, dated 6th July, 1982
Forwarded (four copies) to the
Secretary to Government, Haryana,
Labour and Employment Departments,
Chandigarh as required under Section 15
of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

H. L. GUGNANI,
Commissioner & Secretary

The 3rd September, 1982

No. 9 (1)82-6Lab/8315.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s Vij Jat Industries Modern Industrial Estate, Bahadurgarh.

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT,
HARYANA, ROHTAK

Reference No. 189 of 78

between

SHRI SIRI NIWASH, WORKMAN AND THE MANAGEMENT OF M/S VIJ JAT INDUSTRIES,
MODERN INDUSTRIAL ESTATE, BAHADURGARH

Present :

Shri Rajinder Singh Dahiya, for the workman.
Shri M. M. Kaushal, for the management.

AWARD

This reference has been referred to this Court by the Hon'ble Governor,—vide his order No. ID/RTK/67-78/34025 dated 20th July 1978 under section 10 (i) (c) of the I. D. Act for adjudication of the dispute existing between Shri Siri Niwash, workman and the management of M/s Vij Jat Industries, Bahadurgarh. The term of the reference was:—

Whether the termination of services of Shri Siri Niwash was justified and in order ? If not, what relief is he entitled ?

On the receipt of the order of reference notices as usual were sent to the parties. The parties appeared in response to the same. The parties filed their respective pleadings, issues were framed on the basis of their pleadings and the management was asked to adduce their evidence. Partly evidence of the management was recorded on 24th February, 1981 the case was fixed for remaining evidence of the management. The Parties obtained several adjournments for the same and at last on 27th July, 1982 the authorised representative of the workman made the following statement:—

"I have contacted the workman on several dates of hearing and asked him to lead his evidence but he had not turned up. He is not interested in pursuing his demand. The reference may be answered accordingly."

In view of his statement no further adjudication is required. Accordingly I answer the reference and give my award that the workman is not interested in pursuing his demand leading to this reference and there is no dispute between the parties. The reference is returned in these terms.
Dated the 7th August, 1982.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.

Endst. No. 1886, dated the 9th August, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.
M. KUTTAPAN, Com. and Secy.